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**Attorneys for Defendants and Counter-Claimants  
JOHN D. DIAMOND and DIAMOND PHILLIPS, INC.**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

VAN PHILLIPS,

No. C073305 SI

Plaintiff,

## **INITIAL DISCLOSURES OF DEFENDANTS AND COUNTER-CLAIMANTS JOHN D. DIAMOND AND DIAMOND PHILLIPS, INC.**

JOHN D. DIAMOND; DIAMOND  
PHILLIPS, INCORPORATED, an Illinois  
Corporation; and DOES 1 through 50,  
inclusive.

[FRCP 26]

Judge: Honorable Susan Illston

Complaint Filed: June 22, 2007  
Trial Date: None set

## Defendants

Defendants and Counter-Claimants John D. Diamond and Diamond Phillips, Inc. (“Defendants”) make the following disclosure required by Federal Rule of Civil Procedure 26.

## I. WITNESSES

A. Van Phillips. May be contacted through counsel for plaintiff. Mr. Phillips (“Plaintiff”) has knowledge regarding his communications and business dealings between plaintiff and Defendants related to the ordering, purchase and storage of doors and windows for the projects at issue and related to the work performed by Defendants for Plaintiff on multiple architectural, engineering and design projects which comprise both

1 the claims in the First Amended Complaint and the Counter-Claim and the charges and  
2 invoices related to all such claims.

3           B. Rochelle Reagan. May be contacted through counsel for Plaintiff. Ms.  
4 Reagan has knowledge regarding the billing and invoicing by Defendants related to the  
5 purchase of the doors and windows in dispute and the payments made concerning the  
6 doors and windows, and may have additional information related to the work performed  
7 by Defendants for Plaintiff which comprise both the claims in the First Amended  
8 Complaint and the Counter-Claim.

9           C. Craig Callister, salesperson for Contractor's Window Supply (CWS),  
10 9875 South 500 West, Sandy Utah 84070; Tel: (801)281-6999. Mr. Callister has  
11 information regarding the doors and window in dispute that comprises the core of  
12 Plaintiff's claim against Defendants.

13           D. Charles Vanderwilt, President, Contractor's Window Supply (CWS),  
14 9875 South 500 West, Sandy Utah 84070; Tel: (801)281-6999. Mr. Vanderwilt has  
15 information regarding the doors and window in dispute that comprises the core of  
16 Plaintiff's claim against Defendants.

17           E. Arloween Cazier, bookkeeper for Contractor's Window Supply (CWS),  
18 9875 South 500 West, Sandy Utah 84070; Tel: (801)281-6999. Ms. Cazier may have  
19 information regarding the doors and window in dispute that comprises the core of  
20 Plaintiff's claim against Defendants.

21           F. John Diamond. May be contacted through his counsel. Mr. Diamond has  
22 knowledge of the doors and windows ordered on behalf of Plaintiff, and his business  
23 practices related to marking up the costs of same. Mr. Diamond also has knowledge of  
24 the conversations with Plaintiff regarding the doors and windows and the past dealings of  
25 the parties concerning other materials and appliances ordered and paid for. Mr. Diamond  
26 has knowledge of the work that was performed by Defendants related to the projects  
27 referenced in both the First Amended Complaint and the Counter-Claim, and the sums  
28 owed by Plaintiff on the invoices that comprise the Counter-Claim.

1           F. Lee Phillips-Diamond, erroneously referred to by Plaintiff sometimes as  
 2 Lee Diamond-Phillips. Lee is the spouse of Mr. Diamond and together they operate  
 3 Diamond Phillips, Inc., an architectural and design firm. Ms. Phillips-Diamond has  
 4 knowledge of the business practices of Diamond Phillips, Inc. and their policies for  
 5 marking up materials ordered on behalf of clients including Van Phillips. She has  
 6 knowledge of the doors and windows ordered on behalf of Plaintiff, and business practices  
 7 related to marking up the costs of same. She also has knowledge of the conversations  
 8 with Plaintiff regarding the doors and windows and the past dealings of the parties  
 9 concerning other materials and appliances ordered and paid for by Plaintiff. She has  
 10 knowledge of the work that was performed by Defendants related to the projects  
 11 referenced in both the First Amended Complaint and the Counter-Claim, and the sums  
 12 owed by Plaintiff on the invoices that comprise the Counter-Claim.

13           G. David Tucker, CPA. Mr. Tucker is Defendants' CPA. CPA Mortgage  
 14 Services LLC, 2666 S. 2000 East, Suite 101, Salt Lake City, Utah 84109. Tel.: 801/466-  
 15 3988 or 800-966-0394. Mr. Tucker has knowledge regarding fees, payments, charges and  
 16 the like for various projects.

17           H. Leon Fish, 50 Mounds Road, Ste. 201, San Mateo, CA 94402. Mr. Fish  
 18 was retained directly by Plaintiff to perform an accounting related to the doors and  
 19 windows. Mr. Fish is believed to have knowledge regarding such accounting and his  
 20 opinions related to same.

21 **II. DOCUMENTS**

22 Defendants' disclose the following categories of documents:

23           A. Defendants' files and records regarding all projects referenced in the First  
 24 Amended Complaint and the Counter-Claim, including all files and records which support  
 25 the invoices that Defendants sue for in their Counter-Claim, including but not limited to  
 26 all drawings, reports, designs, sketches, and other architectural, engineering and design  
 27 documents, and all other documents that comprise the records and files of the projects in  
 28 dispute.

1           B. All written communications between Plaintiff and Rochelle Reagan, on  
2 the one hand, and Defendants and Lee Phillips-Diamond, on the other hand, including  
3 electronic communications, concerning the doors and windows that are in dispute,  
4 concerning any other historical evidence of similar purchasing of materials and appliances  
5 by Plaintiff utilizing the same markup, and concerning the work performed for Plaintiff  
6 which comprise the basis of Defendants' claims as set forth in the Counter-Claim.

7           C. An initial, voluntary production of over 3,400 pages of documents  
8 specifically requested by Plaintiff related to the dispute has been provided to Plaintiff by  
9 Defendants. Additional documents related to the doors and windows have been provided  
10 to Leon Fish at the request of Plaintiff. The documents referenced above are located in  
11 Utah and relevant, non-privileged documents related to the above are being assembled for  
12 ultimate production and use at trial.

13 **III. COMPUTATION OF DAMAGES**

14           The computation of amounts owed by Plaintiff to Defendants for the disputed  
15 doors and windows is attached hereto as Exhibit "A". The computation of amounts owed  
16 by Plaintiff to Defendants for the invoices that comprise the subject of the Counter-Claim  
17 is attached hereto as Exhibit "B". The total amount owed by Plaintiff to Defendants is  
18 \$418,200.05 without consideration of additional expenses related to storage fees, shipping  
19 and handling costs.

20 **IV. INSURANCE POLICY**

21           Defendants have no insurance for the claims set forth in the First Amended  
22 Complaint or the Counter-Claim.

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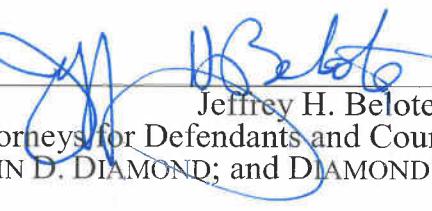
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1 V. CERTIFICATION

2 I hereby certify that to the best of my knowledge, information and belief,  
3 formed after an inquiry reasonable under the circumstances, this disclosure is complete  
4 and correct as of this date.

5 Dated: October 31, 2007

6 CARROLL, BURDICK & McDONOUGH LLP

7 By 

8 Jeffrey H. Belote  
9 Attorneys for Defendants and Counter-Claimants  
10 JOHN D. DIAMOND; and DIAMOND PHILLIPS, INC.

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## EXHIBIT A

Page 1

**DATE: August, 27, 2007****COST SUMMARY FOR VAN L. PHILLIPS (VLP) FOR WINDOW AND DOORS BY DIAMOND PHILLIPS (DP)****GREEN HOUSE**

Net Price	30 % Mark Up	2% Serv. Chg.	2% Fin. Chg.	Ut . Tax	Total	Amt Pd.
\$27,092.62	\$8,128.99	\$541.92x17 mo.	NA	\$1,788.37	\$46,222.62	DP by VLP
		= \$9,212.64				\$37,950.00

**FARM HOUSE**

Net Price	30 % Mark Up	2% Serv. Chg.	2% Fin. Chg.	Ut. Tax	Total	Amt Pd. To
\$32,004.59	\$9,601.38	\$640.08x17mo.	NA	\$2,112.30	\$54,599.63	DP by VLP
		= \$10,881.36				\$40,000.00

**TEA HOUSE**

Net Price	30 % Mark Up	2% Serv. Chg	2% Fin. Chg.	Ut. Tax	Total	Amt. Pd.
\$59,773.43	\$17,932.03	\$1,195.46x8mo.	\$1,195.46x7mo	\$3,945.04	\$99,582.40	DP by VLP
		= \$9,563.68		\$8,368.22		-0-
Sub-Total					\$200,404.65	\$77,950

**SAUSALITO MAIN HOUSE-Windows and doors by Glass Concepts-Never Purchased due to changes by VLP**

Net Price	30% Mark Up	2% Serv. Chg	2% Fin. Chg.	CA Tax Included	Total See Credit Below	Amt. Pd. DP by VLP
\$30,854.34	\$9256.30	NA	NA			\$32,200.00
					Total Due DP by VLP	Total. Amt. Pd. DP by VLP
					\$200,404.65	\$110,150.00

Storage Fees for all windows and doors for the Green House, Farm House and Tea House \$750.00/month for 17 months. **\$12,750.00**

Sub-Total	<b>\$213,154.65</b>
Less amount paid to Diamond Phillips by Van L. Phillips	<b>-110,150.00</b>
<b>Total Amount Due Diamond Phillips by Van L. Phillips</b>	<b>\$103,004.65</b>

Note: There will be additional expenses that will incur with storage fees, the shipping, and the handling of doors to Mendocino. Those expenses are NOT listed in the above prices.

Note: All Service and Finance Charges stated above are based upon the CWS purchase contract. The Service and Finance Charges listed above are based on the Net Prices.

Note: All windows and doors for the Green House, Farm House and Tea House are warehoused by CWS in the Salt Lake City area.

Note: The net prices plus the 30% mark up reflects a savings of \$5,947.74 less than the Utah retail list prices for 2006 as stated by CWS.

## **EXHIBIT B**

dp

Page 1

**DATE: August 27, 2007**

**SUMMARY OF OUTSTANDING INVOICES DUE TO DIAMOND PHILLIPS (DP) BY VAN L. PHILLIPS  
(VLP)**

<b>PROJECT NAME</b>	<b>DATE OF INVOICE</b>	<b>PROJECT # /INV. #</b>	<b>AMT. DUE</b>
Sherwood Forest/Deer Mountain Master Planning	June 21, 2006, September 2006 January 1, 2007	2006.25	\$1,350.00
White Deer Mountain Renovation and Addition Documents	January 21, 2007	2007.10/1	\$41,248.00
White Deer Mountain Renovation and Addition Documents	May 1, 2007	2007.10/2	\$39,826.52
White Deer Mountain Water Tower Renovation and Addition Documents	May 1, 2007	2007.11	\$2,310.00
White Deer Mountain Change of Scope Renovation and Addition Documents	May 1, 2007	2007.12	\$2,456.25
White Deer Mountain Mater Plana and Site Visit	May 1, 2007	2007.13	\$4,225.00
Sausalito Main House Miscellaneous Renovations	May 1, 2007	2006.31	\$24,687.50
Stillwell Point	Jan. 21, 2006, Sept. 1, 2006 Jan. 1, 2007	2005.20	\$20,000.00
NRR Ranch House Construction Documents	May 1, 2007	2006.12	\$51,000.00
NRR Tea House Construction Documents	January 1, 2007	2006.29/1	\$93,998.00
NRR Tea House Construction Documents	May 1, 2007	2006.29/2	\$42,369.13
Green House Main House Construction Documents	August 26, 2007	2006.21/3	\$20,125.00
Green House CDP Coordination	August 26, 2007	2006.22/3	\$1,600.00
CREDIT for Plumbing Fixtures and Appliance for Interior Renovations for the Green House. See Plumbing and Appliance Specification provided to VLP by DP. Change of entire Project scope per VLP			(-\$5,000.00)

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dp

Page 2

CREDIT for Plumbing Fixtures and Appliance for Interior Renovations for the NRR Farm House. (-\$25,000.00)

See Plumbing and Appliance Specification provided to VLP by DP. Change of entire Project scope per VLP

NOTE: From 2003 through 2007 there have been 18 different project invoices that we revised and credit issued for services rendered. This amount totals \$207,710.00 in write-off.

NOTE: Invoices listed above reflect both architectural fees and reimbursables. Copies of all invoices can be sent upon request. With the exception of the invoices dated August 26, 2007 all other invoices have been e-mailed to VLP and faxed to Rochelle Reagan.

NOTE: 3,400 pages of documents were sent to Van Phillips on August 24<sup>th</sup>, 2007 representing architectural drawings, construction documents, specifications and correspondence relative to the Green House and the Sausalito House.

<b>TOTAL AMONT DUE</b>	<b>\$315,195.40</b>
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diamondphillips

944 EAST 200 SOUTH SALT LAKE CITY, UTAH 84102 TELEPHONE: 801.363.0604 FACSIMILE: 801.363.6688

1                   CERTIFICATE OF SERVICE

2                   I hereby certify that the INITIAL DISCLOSURES OF DEFENDANTS AND  
3                   COUNTER-CLAIMANTS JOHN D. DIAMOND AND DIAMOND PHILLIPS, INC.  
4                   [FRCP 26] was served electronically on October 31, 2007 on the individuals on the  
5                   attached Service List.

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7                   Kelli R. Bremer  
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*Phillips v. Diamond, et al.*

USDC-Northern District, San Francisco Division, Action No. C073305 SI

## SERVICE LIST

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